

MONTANA LEGISLATIVE HISTORY

Chapter 537 19 75

Bill H 100 S _____ Original bill & history ☒ C

H. Committee on Labor & Employment Relations S. Committee on Labor & Employment Relations

Hearing Date(s) 1-29 _____ C Hearing Date(s) 2-17 _____ C

_____ C Date Out 2-17 _____ C

_____ C Sen. Judiciary Com. 2-22 _____ C

_____ C Date Out 3-25 _____ C

Date Out 1-31 _____ C

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

The Law Library does not have Sen. Judiciary minutes.
Please check the MNT. Historical Society

Jnt. Conference Committee: 4-21-75; report 4-8-75
The Law Library has no minutes for this
Committee, Please check the MNT. Historical
Society.

LABOR & EMPLOYMENT RELA. COMMITTEE

44th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
75	Create uninsured employer's fund.	1/11	Kimble McKittrick	1/24	AS AMENDED DO PASS	1/24
78	Require cities to pay premium to firefighters, provide min. life insurance, and raise local mill levy.	1/13	Johnson BRAND	1/24	AS AMENDED DO PASS	1/24
95	Cover all public employees under the Unemployment Compensation Laws.	1/16	Magone Shelden	1/24 1/29 2/17, 20	AS AMENDED DO PASS	2/22
100	Create office Workmen's Comp. judge.	1/16	McKittrick Lockrem	1/29 1/31	AS AMENDED DO PASS	1/31
109	Waive 4-1/2% National "on" & "off" trigger for extended benefits.	1/16	McKittrick Driscoll	1/24	AS AMENDED DO PASS	1/24
112	Raise minimum salary of firefighters to \$750 a month.	1/16	BRAND Kanduch	1/29 1/31	DO PASS	1/31

1 *House* BILL NO. *100*
 2 INTRODUCED BY *M. F. Lockrem Driscoll Meloy Mark*
 3 *Harper*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFICE OF
 5 WORKMEN'S COMPENSATION JUDGE; PROVIDING FOR ITS
 6 ADMINISTRATION AND JURISDICTION; AND REPEALING SECTIONS
 7 92-812, 92-813, 92-815 THROUGH 92-817, 92-819, 92-821,
 8 92-822, 92-823, 92-824, 92-824.1, 92-825, 92-827 THROUGH
 9 92-836, 92-1347, 92-1350, 92-1351, 92-1353 THROUGH 92-1355,
 10 92-1357, 92-1359 THROUGH 92-1365."
 11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 13 Section 1. There is a new R.C.M. section numbered
 14 82A-1016 that reads as follows:
 15 82A-1016. Creation of office of workmen's compensation
 16 judge--allocation. (1) There is created the office of
 17 workmen's compensation judge. The office is allocated to
 18 the department of labor and industry for administrative
 19 purposes only as prescribed in section 82A-108, R.C.M. 1947.
 20 (2) The governor shall appoint the workmen's
 21 compensation judge for a term of six (6) years in the same
 22 manner provided by section 93-705 through 93-717, R.C.M.
 23 1947, for the appointment of supreme or district court
 24 judges. A vacancy shall be filled in the same manner as the
 25 original appointment.

1 (3) To be eligible for workmen's compensation judge, a
 2 person must:
 3 (a) have the qualifications necessary for district
 4 court judges found in Article VII, section 9 of the Montana
 5 constitution;
 6 (b) devote full time to his duties as workmen's
 7 compensation judge and not engage in the private practice of
 8 law.
 9 (4) The workmen's compensation judge is entitled to
 10 the same salary and other emoluments as that of a district
 11 judge.
 12 Section 2. Powers of the workmen's compensation judge.
 13 (1) A claimant, compensation plan one employer, or insurer
 14 who has a dispute concerning any benefits under Title 92,
 15 R.C.M. 1947, may petition the workmen's compensation judge
 16 provided for in section 82A-1016. The judge, after a
 17 hearing, shall make a final determination of the dispute
 18 and, in accordance with the law on benefits as set forth in
 19 Title 92, fix and determine any benefits to be paid, and
 20 specify the manner of payment.
 21 (2) The judge may grant nominal disability awards in
 22 cases where it is found that an accident has occurred in the
 23 course and scope of employment, but no disability has
 24 resulted therefrom.
 25 (3) The judge has continuing jurisdiction of cases he

has heard, and may, upon the application of any party, review, diminish, or increase in accordance with the law on benefits as set forth in Title 92, any benefits awarded, upon the grounds that the disability of the person has changed.

Section 3. Disqualification of workmen's compensation judge. The workmen's compensation judge may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of the workmen's compensation judge, the affidavit becomes a part of the record and the decision in the case. The affidavit may be made by any party to an action, motion, or proceeding and shall be filed at the office of the workmen's compensation judge at least fifteen (15) days before the date set for any action, motion, or proceeding (provided the party has had notice of the hearing of such action, motion, or proceeding for a period of at least fifteen (15) days and in case he has not had notice for such length of time he shall file the affidavit immediately upon receiving notice). If the workmen's compensation judge disqualifies himself in any case the chief justice of the Montana supreme court shall appoint a district court judge to hear the case.

Section 4. Location of office. The principal office of the workmen's compensation judge shall be in the city of

Helena.

Section 5. Operating expenses. The workmen's compensation judge may employ such employees as may be required to carry out his duties under this act. All expenditures of the workmen's compensation judge, including but not limited to salaries, traveling expenses, office rent, office equipment and supplies, shall be paid out of the workmen's compensation administration fund.

Section 6. Administrative Procedure Act. (1) All proceedings and hearings before the workmen's compensation judge shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act.

(2) Notwithstanding section 82-4216, R.C.M. 1947, an appeal from a final decision of the workmen's compensation judge shall be filed directly with the supreme court of Montana in the manner provided by law for appeals from the district court in civil cases.

Section 7. Sections 92-812, 92-813, 92-815 through 92-817, 92-819, 92-821, 92-822, 92-823, 92-824, 92-824.1, 92-825, 92-827 through 92-836, 92-1347, 92-1350, 92-1351, 92-1353 through 92-1355, 92-1357, 92-1359 through 92-1365, R.C.M. 1947, are repealed.

-End-

STATE OF MONTANA

REQUEST NO. 80-75

FISCAL NOTE

Form BD-15

In compliance with a written request received January 24, 19 75, there is hereby submitted a Fiscal Note for House Bill 100 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 100 creates the Office of Workmen's Compensation Judge, providing for its administration and jurisdiction.

ASSUMPTIONS:

1. House Bill 100 transfers the quasi-judicial function for the Workmen's Compensation Division to a newly created Workmen's Compensation Judge.
2. The workload of the new judge will be the same as under the present organization.
3. Assume a 10% per year pay raise for the judge.

FISCAL IMPACT:

	FY 76			FY 77		
	Estimated Amt.	Estimated Amt.	Estimated Increase	Estimated Amt.	Estimated Amt.	Estimated Increase
	Under Current Law	Under Proposed Law		Under Current Law	Under Proposed Law	
Effect on expenditure by category:						
Personal Services	\$ 14,253	\$41,790	\$27,537	\$15,536	\$45,333	\$29,797
Operating Expenses	32,830	37,030	4,200	36,113	40,313	4,200
Capital Outlay	250	3,245	2,995	0	0	0
Total Expenditures	<u>\$ 47,333</u>	<u>\$82,065</u>	<u>\$34,732</u>	<u>\$51,649</u>	<u>\$85,646</u>	<u>\$33,997</u>

CONCLUSIONS:

Enactment of House Bill 100 would result in an estimated increase in expenditure of \$68,729 during the biennium.

Michael S. Balling

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: January 28, 1975

MINUTES OF THE MEETING
LABOR & EMPLOYMENT RELATIONS
HOUSE OF REPRESENTATIVES
January 29, 1975

A meeting of the Labor & Employment relations Committee was held on Wednesday, January 29, 1975 at 10:30 a.m. in Room 108 of the Capitol Building. Chairman Kimble presided with all members present except for Rep. Johnson who was excused.

The following bills were heard in this order:

HB 100
HB 112
HB 167
HB 156
HB 95

HB 100--SPONSOR: Speaker McKittrick, district 43, backlogged on the history of this bill. He said he introduced HB 294 last year which stripped the WCD administrator of his control over the three plans, and place them into an independent board with quasi-power. HB 38 which was introduced early this session opened all WCD records for inspection. HB 100 would create an office of a WCD judge, to serve a 6-year term, processing the same qualifications as a district court judge. He must devote all his time to the job. This judicial office is not tied in at all with the WCD administrator, and is only an extension of the intent of the previous bills. Norm Grosfield, acting administrator of WCD, supported the bill for several reasons: the judge would be devoted solely to the resolution of disputed claims; it would improve public perception of the procedure used in disputed claims; and it will relieve the administrator of the quasi-functions so as to concentrate on administrative reorganization and streamlining internal functions. Mr. Grosfield submitted a statement and amendments as per WS I and II. Mr. Jim Murry, AFL-CIO, supported the bill as per WS III, and George Hammon, AFL-CIO, supported the bill as WS IV.

Opponent George Wood, Mt Self Insurers Assn., said that this was a duplication of costs already provided for by the present Hearings Officer, and that the judge would be employed for administrative purposes. He gave further reasoning for his stand as per WS V. He said that the judge would be hearing about 170 cases, of which 40 would be controversial, and may at any time disqualify himself. Chad Smith, Mutual Insurance Alliance, said this would place too much power in one man. He said there would be no review in district court, but would go immediately to the Supreme Court, of which facts cannot be reintroduced.

In Rep. McKittrick's closing statement, he said that the opponents made no mention of the powers vested in the administrator, and said this would divide those powers, and provide a check and balance system. Sivertsen asked if there was a need for two hearings, and McKittrick said that it could be settled in front of the designee, then in district court, and then in the Supreme Court. He said that the biggest financial cost would be the salary. The hearing officer's salary is \$13,000 and the judge's salary would be \$25,000.

HB 112--SPONSOR: Rep. Joe Brand, district 28, said that the present, starting salary for firefighters at \$600. does not attract

Mr. Murry said this would refer only to those people who work during a strike, and that strikebreakers are easily identified. Rep. Kimble asked if this would in fact prohibit a manager to do the work of an employee, and Mr. Murry said no.

HB 156--SPONSOR: Jim Mular, district 85, said this bill is aimed in part, to the airlines, and that a resolution is being introduced which would enlarge on this bill, and requested that it be held in committee until then. Dan Mizner questioned the services this would offer the people, and Tom Windsor said this would forbid any kind of aid from one employer to another. Ed Grady submitted WS XI, opposing the bill, because it would be legitimizing secondary boycotts, and would stifle competition.

GUTHRIE MOVED TO TABLE HEARING ON HB 156 UNTIL A RESOLUTION WAS DRAWN UP, SECONDED BY GILLIGAN. MOTION CARRIED UNANIMOUSLY.

HB 95--BABCOCK MOVED TO TABLE HEARING ON HB 95 PENDING ANOTHER BILL ON THE SAME SUBJECT, SECONDED BY GUTHRIE. MOTION CARRIED UNANIMOUSLY.

There being no further business, the meeting went into executive discussion.

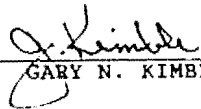
HB 167--FEDERICO MOVED HB 167 DO PASS, SECONDED BY MAGONE. REP. ELLERD MOVED A SUBSTITUTE MOTION THAT HB 167 DO NOT PASS, SECONDED BY SIVERTSEN. Ellerd felt that there WAS no need for the bill. Dassinger thought this would be a good preventive measure. Gilligan agreed that they should address the problem before it happens. Kimble said that the bill was limited in its scope, and would not effect the management nor the people just looking for work. Ellis asked why this did not apply to unions and Mr. Murry replied that they hire mainly professionals. SUBSTITUTE MOTION FAILED W/ ALL OPPOSED EXCEPT FOR ELLERD, BABCOCK, GUTHRIE, SIVERTSEN AND ELLIS IN FAVOR.

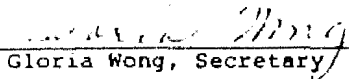
MAIN MOTION THAT HB 167 DO PASS CARRIED WITH ALL IN FAVOR EXCEPT ELLERD, BABCOCK, GUTHRIE, SIVERTSEN AND ELLIS OPPOSED.

HB 100--FEDERICO MOVED TO HOLD HB 100 IN COMMITTEE UNTIL A FISCAL NOTE WAS PREPARED, SECONDED BY ELLIS, MOTION CARRIED UNANIMOUSLY.

HB 112--KELLY MOVED HB 112 DO PASS, SECONDED BY DASSINGER. BABCOCK MOVED A SUBSTITUTE MOTION THAT IT DO NOT PASS, SECONDED BY ELLERD. Mr. Mizner said this would effect 14 cities, of which 5 already comply. Babcock felt that since the mill levy is limited, there is no way a city could fund this. Mr. Mizner felt they should consider use of state income tax funds to pay for this. Federico agreed. SUBSTITUTE MOTION FAILED WITH ALL MEMBERS OPPOSED EXCEPT FOR ELLERD, GUTHRIE, ELLIS, SIVERTSEN AND BABCOCK IN FAVOR.

ORIGINAL MOTION THAT HB 112 DO PASS CARRIED WITH ALL IN FAVOR EXCEPT ELLERD, GUTHRIE, ELLIS, SIVERTSEN AND BABCOCK OPPOSED.


GARY N. KIMBLE, Chairman


Gloria Wong, Secretary

TESTIMONY OF THE DIVISION OF WORKMEN'S COMPENSATION
REGARDING HOUSE BILL 100

Mr. Chairman, members of the Committee, the Division of Workmen's Compensation appears this morning in support of House Bill 100 which would create the office of workmen's compensation judge.

The existing situation is this: The Administrator of the Division of Workmen's Compensation is the person responsible for assuring that the State Insurance Fund is properly administered and is also responsible for adjudicating disputed claims. While the Division has properly separated, through a proper administrative structure, the claims handling procedure and the hearings function, we must admit that a statutory conflict does exist.

This administration has long been concerned with the need for a more clear delineation of duties in the adjudication of disputed claims. In Governor Judge's inaugural state of the state message to the legislative assembly, he supported the concept of a division of responsibility in this area.

The removal of the quasi-judicial functions from the office of the Division of Workmen's Compensation was a procedurally sound and timely move then. It is imperative now if we are to begin to restore public confidence in the Division and those who administer its operation.

During the interim between the 1974 and 1975 legislative season, personnel from the Division worked in concert with this assembly's Select Committee on Workmen's Compensation to produce what we believe is a sound and workable bill, the proposed legislation before this committee today.

Placing the adjudication of disputed workmen's compensation claims in the hands of a workmen's compensation judge has a number of philosophical and operational advantages.

First, we are inclined to believe the working persons of Montana will receive excellent treatment under this concept because the workmen's compensation judge's court will be devoted solely to the resolution of disputed workmen's compensation claims.

Under the present procedure of adjudication, the function of hearing contested cases is sandwiched in with a wide variety of equally demanding and disparate activities such as administration of the State Insurance Fund and the Montana Safety Act.

Second, we believe the nomination of a workmen's compensation law judge on the same basis as that of a district court judge will provide for quantum improvement in the public perception of the procedure for resolution of disputed claims. Public esteem for the judiciary and a very careful segregation of responsibility will make for a very clear public concept of the workings of this important office.

Third, of all proposals advanced for administrative improvement of the adjudication system, creation of a workmen's compensation judge seems the most efficient and economical. The architects of this legislation very carefully did not contemplate the creation of another vast bureaucratic superstructure. Rather they attempted to meet the very specific needs of Montana with a very specific solution.

Fourth, we believe that removal of the quasi-judicial functions from the office of Administrator will free that individual to concentrate on his most pressing priority -- continuation of administrative reorganization and streamlining of the Division's internal functions to ensure that public interest is more adequately protected and to ensure that this state has an effective workmen's compensation delivery system.

House Bill 100 is a workable, efficient, effective and positive piece of legislation. It is timely legislation in the best interests of all Montanans -- employers and workers alike.

The Division of Workmen's Compensation recommends favorable consideration by this committee. Thank you.

PROPOSED AMENDMENTS TO HOUSE BILL 100

On page 1 add on line 6 after the semicolon ";" the following words: "AMENDING SECTION 92-824.1;".

On page 1 delete on line 8 the number "92-824.1".

On page 4 add on line 12 after the word and punctuation "Act." the following sentence: "However, the workmen's compensation judge is not bound by common law and statutory rules of evidence."

On page 4 add between lines 17 and 18 the following material:

"Section 7. Section 92-824.1, R.C.M.1947, is amended to read as follows:

Section 3
~~92-824.1~~ Increase in award for unreasonable delay or refusal to pay. When payment of compensation has been unreasonably delayed or refused, either prior or subsequent to the issuance of an award, the full amount of the order, decision or award may be increased by ten per cent (10%) of the weekly award. The question of unreasonable delay or refusal shall be determined by the ~~workmen's~~ *workman's* compensation judge and such a finding ~~and~~ constitute good cause to rescind, alter or amend any order, decision or award previously made in ~~any~~ cause for the purpose of making the increase provided herein."

On page 4 delete on line 18 the number "7" and insert in lieu thereof the number "8".

On page 4 delete on line 18 the number "92-824.1".





Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59601

405 NORTH LAUREL
CHANCE GULCH

REMARKS OF JAMES W. MURRY ON HOUSE BILL 100, HEARINGS OF THE HOUSE LABOR COMMITTEE, JANUARY 29, 1975

Mr. Chairman and members of the committee, you have before you today one of the most significant pieces of legislation this committee -- or any other committee of the Legislature -- will consider this year.

House Bill 100 embodies a radical and, we feel, a most necessary change in the way the state does business with sick and injured workers.

House Bill 100 is the successor to House Bill 294 introduced by Representative McKittrick two years ago. / House Bill 294 became a spearhead in the controversy surrounding the Workmen's Compensation Division -- and it began the expose' of the corrupt practices within the division.

The Montana State AFL-CIO and our affiliated organizations were the first backers of House Bill 294 because it provided the much needed independent appeals procedure that would deny the administrator of the division the final ruling on adjudication of controverted Workmen's Compensation claims in the first two steps of appeal.

We are heartened to see that this bill -- a product of an interim study by members of both houses of the Legislature -- finally writes the independent appeals adjudicator into law.

As a party at interest in the clean-up of the Workmen's Compensation Division -- as a representative of the group that fought long and hard for that clean-up -- let me say that we are wholeheartedly in favor of the idea of a workmen's compensation judge.

Let me add firmly, that we have no doubt about the fairness, honesty or competence of Norm Grosfeld, just as we had none about his immediate predecessor Larry Zanto.

But the previous administration of the division should have taught us all that it is far too easy for a man sitting atop a pile of money like that in the state insurance fund, to fall prey to the scavengers that want some.

Norm and Larry have taught us that good and honorable people -- even in the most corrupt places -- will perform faithful and honorable service. The scandal has taught us that dishonorable people will do a disservice wherever they are. So there is no panacea in structure. The only possible salvation in any formal structure is that it will be led by honorable people.

That, we are certain, will not be the case with the workmen's compensation judge to be appointed under this act. He will be vested with the powers -- and yes, the obligation of impartiality -- that robes every district court judge. We feel sure that he will perform as society demands of members of the judiciary.

This bill in a single stroke, then, works to assure impartiality, fairness and proper consideration of any controverted workmen's compensation claim. That is important, Mr. Chairman, because the money paid workers hurt or made sick by their jobs is worker's money to begin with.

It doesn't belong to the division ... nor to the private insurers ... nor the lawyers or doctors. It belongs to the person whose hands and muscles and back have been bent to the employer's task -- whatever that task may be.

He deserves the fairest, most decent treatment by government. This bill would not be before you had he received it in the past. This bill is a vital link in the chain of legislation before this body to assure that workers will always receive that fair, decent consideration in the future -- and that we will never again endure the agony and shame that the workmen's compensation scandal has brought on the entire state.

The Montana State AFI-CIO considers this legislation to be a keystone in a just workmen's compensation system. We urge its speedy approval by the committee and passage by the House of Representatives.

American Federation of

STATE, COUNTY, and MUNICIPAL
Employees

AFFILIATED WITH THE AFL-CIO

1/29/75

Mr. Chairman and members of the Labor Committee. Our main thought on House Bill 100 is that perhaps, at last, the lonely fight will be over.

As a working and committed part of the Montana labor movement, State Council 9 -- along with all our union brothers and sisters -- wholeheartedly supported the long, sometimes bitter and very lonely battle the Montana State AFL-CIO waged to rid the Workmen's Compensation Division of the evils of graft and corruption that ran rampant there.

We well remember, that despite the warnings of the Montana State AFL-CIO, only three senators voted to deny reappointment of the former administrator. We well remember that battle in this committee two years ago over House Bill 294, which would have cleaned up the workmen's compensation mess by removing the division's powers to shortchange the workers and enrich the crony lawyers and insurance company representatives.

Now at last this bill comes before you. The creation of a judge to watch over controverted claims, is a long needed and long awaited step. The workers of Montana, the members of Montana Council 9, who are injured or develop occupational diseases need that kind of judicial fairness and impartiality.

We have no doubt that they would receive it from the current division administrator, nor do we doubt that they have had it since 1973 when a new administrator was named. However, the problem remains a very human one, and we must look down the road to the kind of administration possible under less honest and decent persons.

This bill is forward looking and innovative. We commend and urge this committee to approve House Bill 100.

G. L. Hammond, Executive Director
Montana Council 9, AFSCME, AFL-CIO
600 Cooke Street
Helena, MT 59601

My name is George Wood, Executive Secretary, Montana Self-Insurer's Association; and I arise in opposition to House Bill 100.

I quote from the editorial in the Great Falls Tribune dated January 18, 1975. "Most of the gross abuses in the Workmen's Compensation cases and the worst governmental scandal in the state in decades would have been prevented if a special judge had been in charge of the compensation hearings rather than the administrator."

THIS IS NOT THE CASE.

None of the allegations of wrong doings in the so-called "Workmen's Compensation scandal" would have been prevented if there had been a special or administrative judge."

Not one of the "abuses" that have been reported have involved the hearing procedure on disputed claims. The fact is that the hearings procedure places the claim in a goldfish bowl with judicial review of a written record. No allegations have been made that undue influence was applied upon the Hearings Officer.

The allegations of wrong doing all apply to settlements of claims outside the hearings procedure.

You have heard that this bill would prevent the Administrator of the Workmen's Compensation Division from making the decisions on his own claims. This is partially true, but would have been applicable to only 43 cases last year. The annual report of the Division for the past fiscal year indicated that 1,785 claims for compensation were filed under Plan 3, and the total for all three plans was 4,556. All the claims, other than the 43 previously mentioned, would not have been affected by the provisions of this bill.

What does the bill do?

(1) It establishes a new governmental unit headed by an administrative judge which is allocated to the Department of Labor and Industry for administrative purposes only. The administrative judge may employ such employees "as may be required" to carry out his duties including, but not limited to salaries, traveling expenses, office rent, and office equipment and supplies.

This is a duplication of costs already provided for the present Hearings Officer by the Workmen's Compensation Division. It also creates a new governmental unit which is allocated to an existing department for "administrative purposes only."

(2) The bill provides for appointment of the administrative judge for a six-year term in the same manner as appointments are made to the District or Supreme Court.

The appointment for a fixed term is in opposition to executive responsibility as provided in the Executive Reorganization Act. The present administrator of the Workmen's Compensation Division serves at the "pleasure" of the Governor. The present Hearings Officer serves at the "pleasure" of the administrator.

(3) The administrative judge must be a lawyer and cannot engage in the private practice of law. The judge shall be entitled to the same salary and other emoluments as that of a district judge.

The qualifications of the administrative judge are those of a district judge; a lawyer in practice five years. No experience in handling Workmen's Compensation claims is required. The provision on salary and other emoluments would increase present costs and may cause some problems in applying provisions of district court judges retirement benefits.

(4) The judge, after a hearing, shall make a final determination of the dispute; and, in accordance with the law, fix and determine any benefits to be paid and specify the manner of payment.

This is what our present Hearings Officer does. This bill would create an administrative judge to hear approximately 170 claims a year of which approximately 40 could be said to involve an apparent conflict of interest. This seems to be an unnecessary cost burden.

(5) The judge has continuing jurisdiction of cases he has heard.

This provision could cause an administrative "no-man's land" of jurisdiction over litigated claims. Compliance or non-compliance with the administrative judges' decisions could only be determined by review of Division files since receipts and reports must be filed with the Division.

(6) The administrative judge may at any time disqualify himself. An affidavit of disqualification may be filed by any party to an action. However, it only becomes part of ^{the} record, unless the administrative judge disqualifies himself. In the event of disqualification, the Chief Justice of the Supreme Court shall appoint a District Court Judge to hear the case.

The present hearings officer cannot be disqualified. The hearings officer is assigned the disputed claim by the administrator. The bill makes it possible for the administrative judge, the Chief Justice of the Supreme Court and a District Judge to be involved in the settling of a disputed Workmen's Compensation claim.

(7) Appeals from the decisions of the administrative judge shall be filed directly with the Supreme Court.

The present law provides for appeal from a decision of the Workmen's Compensation Division to the District Court to the Supreme Court. This bill would not allow the Injured workmen to appeal a decision order to the area of their residence before a District Judge elected by the citizens of their judicial districts.

From the foregoing, I trust that you will conclude that the demerits of the bill outweigh the merits and report House Bill 100

DO NOT PASS.

GEORGE WOOD

Kimble recommended to put this bill in a subcommittee, to work out any additional amendments, with Federico as chairman and Ellerd and Dassinger as members.

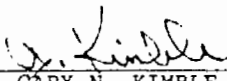
HB 100--BABCOCK MOVED TO AMEND "WORKMEN'S" TO "WORKERS'", SECONDED BY FEDERICO, MOTION CARRIED ANIMOUSLY.

TRAVIS MOVED TO AMEND PAGE 3, BY INSERTING A SECTION 3 AS PER STANDING COMMITTEE REPORT, AND AMEND SECTION 6, PAGE 4, LINE 12, BY INSERTING : "HOWEVER, THE WORKERS' COMPENSATION JUDGE IS NOT BOUND BY COMMON LAW AND STATUTORY RULES OF EVIDENCE.", SECONDED BY FEDERICO, MOTION CARRIED UNANIMOUSLY.

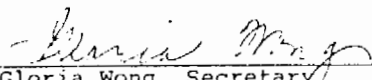
JOHNSON MOVED HB 100 AS AMENDED DO PASS, SECONDED BY GILLIGAN, MOTION CARRIED UNANIMOUSLY.

HB 112--GILLIGAN MOVED HB 112 DO PASS, SECONDED BY DASSINGER. Sivertsen thought that they were putting more and more demands on cities, which places them in a financial bind. MOTION CARRIED WITH SIVERTSEN, ELLIS, BABCOCK, ELLERD, AND GUTHRIE OPPOSED.

There being no further business, the meeting was adjourned to reconvene February 5, 1975 at 10:30 a.m.



GARY N. KIMBLE, Chairman



Gloria Wong, Secretary

HOUSE BILL NO. 100

INTRODUCED BY MCKITTRICK, LOCKREM, DRISCOLL,

MELOY, MARKS, HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFICE OF WORKMEN'S WORKERS' COMPENSATION JUDGE; PROVIDING FOR ITS ADMINISTRATION AND JURISDICTION; AND REPEALING SECTIONS 92-812, 92-813, 92-815 THROUGH 92-817, 92-819, 92-821, 92-822, 92-823, 92-824, 92-824.1, 92-825, 92-827 THROUGH 92-836, 92-1347, 92-1350, 92-1351, 92-1353 THROUGH 92-1355, 92-1357, 92-1359 THROUGH 92-1365."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. There is a new R.C.M. section numbered 82A-1016 that reads as follows:

82A-1016. Creation of office of workmen's WORKERS' compensation judge--allocation. (1) There is created the office of workmen's WORKERS' compensation judge. The office is allocated to the department of labor and industry for administrative purposes only as prescribed in section 82A-108, R.C.M. 1947.

(2) The governor shall appoint the workmen's WORKERS' compensation judge for a term of six (6) years in the same manner provided by section 93-705 through 93-717, R.C.M. 1947, for the appointment of supreme or district court

judges. A vacancy shall be filled in the same manner as the original appointment.

(3) To be eligible for workmen's WORKERS' compensation judge, a person must:

(a) have the qualifications necessary for district court judges found in Article VII, section 9 of the Montana constitution;

(b) devote full time to ~~his~~ THE duties as workmen's OF WORKERS' compensation judge and not engage in the private practice of law.

(4) The workmen's WORKERS' compensation judge is entitled to the same salary and other emoluments as that of a district judge.

Section 2. Powers of the workmen's WORKERS' compensation judge. (1) A claimant, compensation plan one employer, or insurer who has a dispute concerning any benefits under Title 92, R.C.M. 1947, may petition the workmen's WORKERS' compensation judge provided for in section 82A-1016. The judge, after a hearing, shall make a final determination of the dispute and, in accordance with the law on benefits as set forth in Title 92, fix and determine any benefits to be paid, and specify the manner of payment.

(2) The judge may grant nominal disability awards in cases where it is found that an accident has occurred in the

THIRD READING

1 course and scope of employment, but no disability has
2 resulted therefrom.

3 (3) The judge has continuing jurisdiction of cases he
4 has heard, and may, upon the application of any party,
5 review, diminish, or increase in accordance with the law on
6 benefits as set forth in Title 92, any benefits awarded,
7 upon the grounds that the disability of the person has
8 changed.

9 SECTION 3. INCREASE IN AWARD FOR UNREASONABLE DELAY OR
10 REFUSAL TO PAY. WHEN PAYMENT OF COMPENSATION HAS BEEN
11 UNREASONABLY DELAYED OR REFUSED, EITHER PRIOR OR SUBSEQUENT
12 TO THE ISSUANCE OF AN AWARD, THE FULL AMOUNT OF THE ORDER,
13 DECISION OR AWARD MAY BE INCREASED BY TEN PERCENT (10%) OF
14 THE WEEKLY AWARD. THE QUESTION OF UNREASONABLE DELAY OR
15 REFUSAL SHALL BE DETERMINED BY THE WORKERS' COMPENSATION
16 JUDGE AND SUCH A FINDING CONSTITUTES GOOD CAUSE TO RESCIND,
17 ALTER OR AMEND ANY ORDER, DECISION OR AWARD PREVIOUSLY MADE
18 IN THE CAUSE FOR THE PURPOSE OF MAKING THE INCREASE PROVIDED
19 HEREIN.

20 Section 4. Disqualification of ~~workmen's~~ WORKERS'
21 compensation judge. The ~~workmen's~~ WORKERS' compensation
22 judge may at any time disqualify himself. On the filing in
23 good faith of a timely and sufficient affidavit of personal
24 bias or other disqualification of the ~~workmen's~~ WORKERS'
25 compensation judge, the affidavit becomes a part of the

1 record and the decision in the case. The affidavit may be
2 made by any party to an action, motion, or proceeding and
3 shall be filed at the office of the ~~workmen's~~ WORKERS'
4 compensation judge at least fifteen (15) days before the
5 date set for any action, motion, or proceeding (provided the
6 party has had notice of the hearing of such action, motion,
7 or proceeding for a period of at least fifteen (15) days and
8 in case he THE PARTY has not had notice for such length of
9 time he THE PARTY shall file the affidavit immediately upon
10 receiving notice). If the ~~workmen's~~ WORKERS' compensation
11 judge disqualifies himself in any case the chief justice of
12 the Montana supreme court shall appoint a district court
13 judge to hear the case.

14 Section 5. Location of office. The principal office
15 of the ~~workmen's~~ WORKERS' compensation judge shall be in the
16 city of Helena.

17 Section 6. Operating expenses. The ~~workmen's~~ WORKERS'
18 compensation judge may employ such employees as may be
19 required to carry out ~~his~~ THE duties under this act. All
20 expenditures of the ~~workmen's~~ WORKERS' compensation judge,
21 including but not limited to salaries, traveling expenses,
22 office rent, office equipment and supplies, shall be paid
23 out of the ~~workmen's~~ WORKERS' compensation administration
24 fund.

25 Section 7. Administrative Procedure Act. (1) All

1 proceedings and hearings before the ~~workmen's~~ WORKERS'
2 compensation judge shall be in accordance with the
3 appropriate provisions of the Montana Administrative
4 Procedure Act. HOWEVER, THE WORKERS' COMPENSATION JUDGE IS
5 NOT BOUND BY COMMON LAW AND STATUTORY RULES OF EVIDENCE.

6 (2) Notwithstanding section 82-4216, R.C.M. 1947, an
7 appeal from a final decision of the ~~workmen's~~ WORKERS'
8 compensation judge shall be filed directly with the supreme
9 court of Montana in the manner provided by law for appeals
10 from the district court in civil cases.

11 Section 8. Sections 92-812, 92-813, 92-815 through
12 92-817, 92-819, 92-821, 92-822, 92-823, 92-824, 92-824.1,
13 92-825, 92-827 through 92-836, 92-1347, 92-1350, 92-1351,
14 92-1353 through 92-1355, 92-1357, 92-1359 through 92-1365,
15 R.C.M. 1947, are repealed.

-End-

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

February 17, 1975

The thirteenth meeting of the Labor and Employment Relations Committee was called to order by Chairman Lee on the above date in Room 402 of the State Capitol Building at 9:30 a.m.

ROLL CALL: All members present.

CONSIDERATION OF HOUSE BILL 100: An act creating the office of Workers' Compensation Judge; providing for its administration and jurisdiction; and repealing some sections.

Representative McKittrick appeared before the committee to introduce HB 100. This bill was a product of the Interim Committee which was concerned with the absolute power invested in the administrator. This bill creates a Workmen's Compensation Judge. The Workmens Compensation Judge would be an individual office with no relationship to the administrator. This office would be set up to hear dispute cases to be sure plans 1, 2, and 3 are properly functioning. This Judge would be appointed by the Governor. The Workmens Compensation Judge would have to have all the qualifications of a district judge. The judge would hear all plan 1, 2, and 3 cases. He would have to travel to where the claimant had the accident to investigate the facts. If a judge wants he could disqualify himself from a case and the district court would appoint someone to take the case.

Jim Murry, of the AFL-CIO appeared in support of this bill. This is a necessary change. When HB 294 was introduced last year it was a spearhead for this bill and the AFL-CIO was the first backer of HB 294. The AFL-CIO considers this legislation to be a keystone in a just Workmens Compensation system. (See Attached).

Norman Grosfield, Administrator of the Division of Workmens Compensation, appeared before the committee in support of HB 100. (See attached testimony.)

George Wood, Executive Secretary, Montana Self Insurer's Association, appeared in opposition to HB 100. Many of the provisions in the bill are not necessary. For example the cost of this program is unnecessary because this bill creates an administrative judge to hear approximately 170 claims a year of which approximately 40 could be said to involve an apparent conflict of interest. The disqualifications clause is unnecessary. Further objection to this bill is outlined on the prepared testimony. (See attached.)

Representative McKittrick, in closing stated that this bill should be approached along with the other bills that came out of the Interim Committee. These bills have been submitted to the Workmen's Compensation Division. Some of these bills are the bills for injured workmen insurance, the inspection of files, etc., should be taken in the light of HB 100 because the intent is being furthered. This bill will separate the power of the Workmens Compensation Division; a type of "checks and balances." The judge will be under the scrutiny and direct supervision of the Supreme Court. This is not a new concept as Nebraska does have a division such as this. The injured workman can have his claim processed which will end those abuses that occurred in the past due to overloads.

Discussion was then held by the committee. At this point Senator Hazelbaker asked, in reference to section 7, if the bills in the Montana Act were similar. Representative McKittrick stated that this amendment was not part of the bill introduced but was put in the bill as part of Mr. Grosfield's recommendations to the committee. This particular bill would hopefully alleviate in some of the minor cases the need for an attorney. The injured workman could set down in layman's language what happened exactly. Mr. Grosfield then added that the Administration Procedure Act states this. Generally the rules of evidence are not required to be strictly followed but do process would be followed.

Senator Norman then asked if a worker came in and made his case the best he could and later the matter could not be resolved, and went to the Supreme Court, could the statements the worker made go against him. Norman Grosfield stated that this would be left up to the court to sift through the statements that could be determined detrimental. Representative McKittrick stated that a worker representing himself does more harm and that is why attorneys are a needed function in society.

CONSIDERATION OF HOUSE BILL 172: An act granting leaves of absence to employees for cultural, religious, or ceremonial reasons.

Representative Federico appeared before the committee to introduce this bill. It is important for the law to grant equal leave under the system as it does to other religious, or cultural groups. We conducted a workshop to set up this bill in such a way that it covers everyone as fairly as possible. The law can not cater to the majority.

Michael Pichette, appeared before the committee in support of HB 72. The Democratic Party took a stance in support of this aspect. Equal holidays should be granted to all cultures, because everyone does not share in the same celebrations.

Discussion was then held by the committee. Senator Blaylock stated his concern in this bill. This could prevent someone from getting a job because, for example, if a man was a Seven Day Adventist and wanted Saturday off for religious services, he might not get hired because the company he is applying with might have to work Saturdays. Representative Federico stated that the same thing has happened in the past when it came time for the Indian American to have their Pow Wow's. Employers did not want them to just up and leave for one of these. This is why we added the part that no employer shall be required to grant leave if it will cause undue hardship.

CONSIDERATION OF SENATE BILL 398: An act requiring contractors to acquire surety bonds to insure workers' wages.

Senator Hazelbaker appeared before the committee to introduce this bill. The subject matter of the bill is to require contractors to present bonds. This would prevent fly by night contractors that up and leave in the middle of the night without paying the employees wages. Similar legislation is on the books which deals with the Greasy Spoon Cafes that leave without paying wages to their employees.

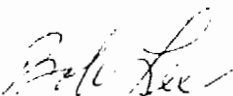
DISPOSITION OF HOUSE BILL 167: Senator Smith moved that the amendments be adopted. (See standing committee report.) Motion carried unanimously with Senator Etchart excused. Senator Smith moved that House Bill 167 AND AS SO AMENDED, BE CONCURRED IN. Motion carried unanimously with Senator Etchart excused.

DISPOSITION OF HOUSE BILL 100: Senator Norman moved that HB 100 BE CONCURRED IN. Motion carried with Senator Blaylock and Senator Olson abstaining and Senator Etchart excused.

DISPOSITION OF HOUSE BILL 172: Senator Smith moved to adopt the amendments. Motion carried unanimously with Senator Etchart excused. Action on the bill will be taken at a later date.

ADJOURN:

There being no further business, the meeting was adjourned at 11:00 a.m.



Robert E. Lee, Chairman



Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59401

405 NORTH LAST
CHARLES G. LICH

REMARKS OF JAMES W. MURRY ON HOUSE BILL 100, HEARINGS OF THE SENATE LABOR COMMITTEE, FEBRUARY 17, 1973

Mr. Chairman and members of the committee, you have before you today one of the most significant pieces of legislation this committee -- or any other committee of the Legislature -- will consider this year.

House Bill 100 embodies a radical and, we feel, a most necessary change in the way the state does business with sick and injured workers.

House Bill 100 is the successor to House Bill 294 introduced by Representative McKittrick two years ago. House Bill 294 became a spearhead in the controversy surrounding the Workmen's Compensation Division -- and it began the expose' of the corrupt practices within the division.

The Montana State AFL-CIO and our affiliated organizations were the first backers of House Bill 294 because it provided the much needed independent appeals procedure that would deny the administrator of the division the final ruling on adjudication of controverted Workmen's Compensation claims in the first two steps of appeal.

We are heartened to see that this bill -- a product of an interim study by members of both houses of the Legislature -- finally writes the independent appeals adjudicator into law.

As a party at interest in the clean-up of the Workmen's Compensation Division -- as a representative of the group that fought long and hard for that clean-up -- let me say that we are wholeheartedly in favor of the idea of a workmen's compensation judge.

Let me add firmly, that we have no doubt about the fairness, honesty or competence of Norm Grosfield, just as we had none about his immediate predecessor Larry Zanto.

But the previous administration of the division should have taught us all that it is far too easy for a man sitting atop a pile of money like that in the state insurance fund, to fall prey to the scavengers that want some.

Norm and Larry have taught us that good and honorable people -- even in the most corrupt places -- will perform faithful and honorable service. The scandal has taught us that dishonorable people will do a disservice wherever they are. So there is no pancea in structure. The only possible salvation in any formal structure is that it will be led by honorable people.

That, we are certain, will not be the case with the workmen's compensation judge to be appointed under this act. He will be vested with the powers -- and yes, the obligation of impartiality -- that robes every district court judge. We feel sure that he will perform as society demands of members of the judiciary.

This bill in a single stroke, then, works to assure impartiality, fairness and proper consideration of any controverted workmen's compensation claim. That is important, Mr. Chairman, because the money paid workers hurt or made sick by their jobs is worker's money to begin with.

It doesn't belong to the division ... nor to the private insurers ... nor the lawyers or doctors. It belongs to the person whose hands and muscles and back have been bent to the employer's task -- whatever that task may be.

He deserves the fairest, most decent treatment by government. This bill would not be before you had he received it in the past. This bill is a vital link in the chain of legislation before this body to assure that workers will always receive that fair, decent consideration in the future -- and that we will never again endure the agony and shame that the workmen's compensation scandal has brought on the entire state.

The Montana State AFL-CIO considers this legislation to be a keystone in a just workmen's compensation system. We urge its speedy approval by the committee and passage by the Senate.

TESTIMONY OF THE DIVISION OF WORKMEN'S COMPENSATION
REGARDING HOUSE BILL 100

Mr. Chairman, members of the Committee, the Division of Workmen's Compensation appears this morning in support of House Bill 100 which would create the office of workmen's compensation judge.

The existing situation is this: The Administrator of the Division of Workmen's Compensation is the person responsible for assuring that the State Insurance Fund is properly administered and is also responsible for adjudicating disputed claims. While the Division has properly separated, through a proper administrative structure, the claims handling procedure and the hearings function, we must admit that a statutory conflict does exist.

This administration has long been concerned with the need for a more clear delineation of duties in the adjudication of disputed claims. In Governor Judge's inaugural state of the state message to the legislative assembly, he supported the concept of a division of responsibility in this area.

The removal of the quasi-judicial functions from the office of the Division of Workmen's Compensation was a procedurally sound and timely move then. It is imperative now if we are to begin to restore public confidence in the Division and those who administer its operation.

During the interim between the 1974 and 1975 legislative season, personnel from the Division worked in concert with this assembly's Select Committee on Workmen's Compensation to produce what we believe is a sound and workable bill, the proposed legislation before this committee today.

Placing the adjudication of disputed workmen's compensation claims in the hands of a workmen's compensation judge has a number of philosophical and operational advantages.

First, we are inclined to believe the working persons of Montana will receive excellent treatment under this concept because the workmen's compensation judge's court will be devoted solely to the resolution of disputed workmen's compensation claims.

Under the present procedure of adjudication, the function of hearing contested cases is sandwiched in with a wide variety of equally demanding and disparate activities such as administration of the State Insurance Fund and the Montana Safety Act.

Second, we believe the nomination of a workmen's compensation law judge on the same basis as that of a district court judge will provide for quantum improvement in the public perception of the procedure for resolution of disputed claims. Public esteem for the judiciary and a very careful segregation of responsibility will make for a very clear public concept of the workings of this important office.

Third, of all proposals advanced for administrative improvement of the adjudication system, creation of a workmen's compensation judge seems the most efficient and economical. The architects of this legislation very carefully did not contemplate the creation of another vast bureaucratic superstructure. Rather they attempted to meet the very specific needs of Montana with a very specific solution.

Fourth, we believe that removal of the quasi-judicial functions from the office of Administrator will free that individual to concentrate on his most pressing priority -- continuation of administrative reorganization and streamlining of the Division's internal functions to ensure that public interest is more adequately protected and to ensure that this state has an effective workmen's compensation delivery system.

House Bill 100 is a workable, efficient, effective and positive piece of legislation. It is timely legislation in the best interests of all Montanans -- employers and workers alike.

The Division of Workmen's Compensation recommends favorable consideration by this committee. Thank you.

My name is George Wood, Executive Secretary, Montana Self-Insurer's Association; and I arise in opposition to House Bill 100.

I quote from the editorial in the Great Falls Tribune dated January 18, 1975. "Most of the gross abuses in the Workmen's Compensation cases and the worst governmental scandal in the state in decades would have been prevented if a special judge had been in charge of the compensation hearings rather than the administrator."

THIS IS NOT THE CASE.

None of the allegations of wrong doings in the so-called "Workmen's Compensation scandal" would have been prevented if there had been a special or administrative judge."

Not one of the "abuses" that have been reported have involved the hearing procedure on disputed claims. The fact is that the hearings procedure places the claim in a goldfish bowl with judicial review of a written record. No allegations have been made that undue influence was applied upon the Hearings Officer.

The allegations of wrong doing all apply to settlements of claims outside the hearings procedure.

You have heard that this bill would prevent the Administrator of the Workmen's Compensation Division from making the decisions on his own claims. This is partially true, but would have been applicable to only 43 cases last year. The annual report of the division for the past fiscal year indicated that 1,785 claims for compensation were filed under Plan 3, and the total for all three plans was 4,556. All the claims, other than the 43 previously mentioned, would not have been affected by the provisions of this bill.

What does the bill do?

(1) It establishes a new governmental unit headed by an administrative judge which is allocated to the Department of Labor and Industry for administrative purposes only. The administrative judge may employ such employees "as may be required" to carry out his duties including, but not limited to salaries, traveling expenses, office rent, and office equipment and supplies.

This is a duplication of costs already provided for the present Hearings Officer by the Workmen's Compensation Division. It also creates a new governmental unit which is allocated to an existing department for administrative purposes only.

(2) The bill provides for appointment of the administrative judge for a six-year term in the same manner as appointments are made by the District or Supreme Court.

The appointment for a fixed term is in opposition to executive responsibility as provided in the Executive Reorganization Act. The present administrator of the Workmen's Compensation Division serves at the "pleasure" of the Governor. The present Hearings Officer serves at the "pleasure" of the administrator.

(3) The administrative judge must be a lawyer and cannot engage in the private practice of law. The judge shall be entitled to the same salary and other emoluments as that of a district judge.

The qualifications of the administrative judge are those of a district judge; a lawyer in practice five years. No experience in handling Workmen's Compensation claims is required. The provision on salary and other emoluments would increase present costs and may cause some problem in applying provisions of district court judges retirement benefits.

(4) The judge, after a hearing, shall make a final determination of the dispute; and, in accordance with the law, fix and determine any benefits to be paid and specify the manner of payment.

This is what our present Hearings Officer does. This bill would create an administrative judge to hear approximately 170 claims a year of which approximately 40 could be said to involve an apparent conflict of interest. This seems to be an unnecessary cost burden.

(5) The judge has continuing jurisdiction of cases he has heard.

This provision could cause an administrative "no-man's land" of jurisdiction over litigated claims. Compliance or non-compliance with the administrative judges' decisions could only be determined by review of Division files since receipts and reports must be filed with the Division.

(6) The administrative judge may at any time disqualify himself. An affidavit of disqualification may be filed by any party to an action. However, it only becomes part of record unless the administrative judge disqualifies himself. In the event of disqualification, the Chief Justice of the Supreme Court shall appoint a District Court Judge to hear the case.

The present hearings officer cannot be disqualified. The hearings officer is assigned the disputed claim by the administrator. The bill makes it possible for the administrative judge, the Chief Justice of the Supreme Court and a District Judge to be involved in the settling of a disputed Workmen's Compensation claim.

(7) Appeals from the decisions of the administrative judge shall be filed directly with the Supreme Court.

The present law provides for appeal from a decision of the Workmen's Compensation Division to the District Court to the Supreme Court. This bill would not allow the injured workmen to appeal a decision order to the area of their residence before a District Judge elected by the citizens of their judicial districts.

From the foregoing, I trust that you will conclude that the demerits of the bill outweigh the merits and report House Bill 100

DO NOT PASS.

GEORGE WOOD

STANDING COMMITTEE REPORT

February 17, 1975

MR. PRESIDENT

We, your committee on Labor and Employment Relations

having had under consideration House Bill No. 100

Respectfully report as follows: That House Bill No. 100

BE CONCURRED IN.

House Bill No. 32, having been read three several times, was concurred in by the following roll call vote:

Ayes: Aber, Blaylock, Boylan, Brown, Cetrone, Colberg, Conover, Devine, Drake, Fasbender, Flynn, Foster, Galt, Goodover, Graham, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lee, Lynch, McCallum, Manley, Manning, Mathers, Mehrens, Murphy, Nelson, Norman, Olson, Regan, Roberts, Romney, Rosell, Roskie, Seibel, R. Smith, Stephens, Story, Thiessen, Towe, Turnage, Warden, Watt, Mr. President. Total 46.

Noes: Etchart. Total 1.

Absent and not voting: Dunkle, Greely. Total 2.

Excused: E. Smith. Total 1.

Motion was made by Senator Thiessen that House Bill No. 78 be taken from Third Reading and be rereferred to Second Reading this Legislative Day.

Motion carried by the following roll call vote:

Ayes: Aber, Boylan, Brown, Conover, Devine, Drake, Etchart, Foster, Galt, Goodover, Graham, Himsl, Kolstad, Manley, Manning, Mathers, Murphy, Nelson, Olson, Regan, Roskie, Seibel, Stephens, Story, Thiessen, Turnage, Mr. President. Total 27.

Noes: Blaylock, Cetrone, Colberg, Dunkle, Fasbender, Flynn, Greely, Hazelbaker, Healy, Jergeson, Lee, Lynch, Norman, Roberts, Romney, Rosell, R. Smith, Towe, Warden, Watt. Total 20.

Absent and not voting: McCallum, Mehrens. Total 2.

Excused: E. Smith. Total 1.

House Bill No. 253, having been read three several times, was concurred in by the following roll call vote:

Ayes: Aber, Blaylock, Boylan, Brown, Cetrone, Colberg, Conover, Devine, Drake, Dunkle, Etchart, Fasbender, Flynn, Foster, Galt, Goodover, Graham, Greely, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lee, Lynch, McCallum, Manley, Manning, Mathers, Mehrens, Murphy, Nelson, Norman, Olson, Regan, Roberts, Romney, Rosell, Roskie, Seibel, R. Smith, Stephens, Story, Thiessen, Towe, Turnage, Warden, Watt, Mr. President. Total 49.

Noes: None.

Absent and not voting: None.

Excused: E. Smith. Total 1.

At the request of the President, and without objection, the Senate reverted to Order of Business No. 6.

MOTIONS

Motion was made by Senator Turnage, that House Bill No. 100 be taken from Second Reading and be rereferred to the Committee on Judiciary.

Motion carried by the following roll call vote:

Ayes: Aber, Blaylock, Brown, Cetrone, Colberg, Conover, Drake, Dunkle, Etchart, Fasbender, Flynn, Foster, Galt, Goodover, Graham, Greely, Hazelbaker, Healy, Himsl, Kolstad, Lynch, McCallum, Manning, Mathers, Mehrens, Murphy, Nelson, Norman, Olson, Regan, Romney,

Rosell, Roskie, Seibel, Stephens, Story, Thiessen, Towe, Turnage, Warden, Mr. President. Total 41.

Noes: Boylan, Devine, Jergeson, Lee, Manley, Roberts, R. Smith. Total 7.

Absent and not voting: Watt. Total 1.

Excused: E. Smith. Total 1.

Upon motion of Senator Lynch, duly carried, that Senate Bill No. 362 be taken from the Committee on Rules and be placed on Second Reading, February 22, 1975.

BUSINESS ON SECOND READING

Upon the motion of Senator Lynch, duly carried, the Senate resolved itself into a Committee of the Whole for the consideration of Business on Second Reading.

Senator Dunkle in the Chair. Committee arose.

Senate resumed. President McOmber presiding.

The Committee of the Whole submitted the following report:

Mr. President: We, your Committee of the Whole, having had under consideration Business on Second Reading, respectfully report and recommend as follows:

That Senate Bill No. 355 be moved to the bottom of the board.

That Senate Bill No. 233 be indefinitely postponed. Opposed by Aber, Brown, Devine, Drake, Flynn, Foster, Goodover, Graham, Hazelbaker, Healy, Himsl, Kolstad, Lynch, McOmber, Manley, Manning, Mathers, Olson, Rosell, R. Smith, Stephens, Thiessen, Watt.

That Senate Bill No. 202 be amended as follows:

1. Amend page 1, section 1, line 13.

Following: "person"

Insert: "or organization"

2. Amend page 2, section 4, line 25.

Following: "either"

Insert: ", person or organization"

3. Amend page 3, line 9.

Following: line 9

Insert: "Section 6. Nothing in this act shall be construed to prohibit any communications medium from commenting on the voting record of a candidate in an editorial, news story or any other non-advertising message."

Renumber: all subsequent sections

(Amendments opposed by Dunkle, Goodover, Hazelbaker, Rosell.)

And as so amended, do pass. Opposed by Drake, Dunkle, Etchart, Goodover, Hazelbaker, Himsl, Nelson, Olson, Rosell, Roskie, Stephens, Story.

That Senate Bill No. 203 be amended as follows:

1. Amend page 1, section 1, line 25.

Following: "agricultural"

Insert: "and silvicultural"

March 25, 1975

SENATE COMMITTEE ON JUDICIARY

AMENDMENTS TO HOUSE BILL NO. 100

That House Bill No. 100, third reading, be amended as follows:

Amend title, line 11.

Following: "92-1365"

Insert: "and providing an effective date"

Amend page 1, section 1, line 19.

Following: "of"

Strike: "labor and industry"

Insert: "administration"

Amend page 2, section 1, line 13.

Following: "judge"

Insert: "but shall be accorded retirement benefits under the public employees retirement system"

Amend page 3, section 2, line 2.

Following: line 2

Insert: "(3) The workers' compensation judge may, on his own motion or on request of a party, review and approve or disapprove any settlement approved by the workers' compensation division.
All lump sum settlements between the division and a claimant under plan III shall be approved by the workers' compensation judge."

Renumber: Subsequent subsection

Amend page 3, section 2, line 4.

Following: "heard"

Insert: "or claims settled"

Amend page 3, section 2, line 6.

Following: "awarded"

Insert: "or settlement agreement between the division and a claimant"

Amend page 3, section 4, lines 19 through line 13 on page 4.

Following: line 19

Strike: Section 4 in its entirety

Renumber: All subsequent sections

Amend page 4, section 6, line 20.

Following: "~~workman's~~"

Strike: "~~WPORKERS'~~"

Insert: "workers'"

Amend page 5, section 8, line 15.

Following: line 15

Insert: "Section 9. Effective date. Section 1 of this act is effective on passage and approval."

4. Amend page 5, section 4, lines 12 through 14 and line 15.

Following: "shall"

Strike: "rule on the petition prior to producers meeting on the proposed program. The county commissioners' decision shall be based upon the findings of fact concerning the insect infestation"

Insert: "grant such petition"

And as so amended, be concurred in.

GRAHAM, Chairman

Report adopted.

Mr. President: We, your Committee on Judiciary, having had under consideration House Bill No. 27, respectfully report as follows: That House Bill No. 27, third reading, be amended as follows:

1. Amend page 4, section 4, lines 20 through 21.

Following: line 19

Strike: lines 20 through 21 in their entirety

Renumber: all subsequent subsections

2. Amend page 6, section 7, line 13.

Following: "person,"

Insert: "and"

3. Amend page 6, section 7, lines 15 through 17.

Following: "accident"

Strike: lines 15 through 17 in their entirety

Insert: "."

4. Amend page 10, section 8, line 5.

Following: "insurance"

Insert: "—highway patrol may obtain registration and license plates"

5. Amend page 10, section 8, lines 14 and 15.

Following: "damages"

Strike: "incurred by the former policyholder"

Insert: "that would otherwise have been covered by the policy"

6. Amend page 10, section 8, line 19.

Following: line 19

Insert: "(4) The Montana highway patrol may obtain physical possession of motor vehicle registration certificates and motor vehicle license plates for any motor vehicle not insured hereunder."

7. Amend page 11, section 10, lines 4 through line 2 on page 12.

Following: line 4

Strike: section 10 in its entirety

Renumber: all subsequent sections

8. Amend page 14, section 16, lines 4 through line 17 on page 16.

Following: line 4

Strike: sections 16 through 19 in their entirety

Renumber: all subsequent sections

And as so amended, be concurred in.

TOWE, Chairman

Report adopted.

Mr. President: We, your Committee on Judiciary, having had under consideration House Bill No. 100, respectfully report as follows: That House Bill No. 100, third reading bill, be amended as follows:

1. Amend title, line 11.
Following: "92-1365"
Insert: "and providing an effective date"
2. Amend page 1, section 1, line 19.
Following: "of"
Strike: "labor and industry"
Insert: "administration"
3. Amend page 2, section 1, line 13.
Following: "judge"
Insert: "but shall be accorded retirement benefits under the public employees retirement system"
4. Amend page 3, section 2, line 2.
Following: line 2
Insert: "(3) The workers' compensation judge may, on his own motion or on request of a party, review and approve or disapprove any settlement approved by the workers' compensation division.

All lump sum settlements between the division and a claimant under plan III shall be approved by the workers' compensation judge."
Renumber: subsequent subsection
5. Amend page 3, section 2, line 4.
Following: "heard"
Insert: "or claims settled"
6. Amend page 3, section 2, line 6.
Following: "awarded"
Insert: "or settlement agreement between the division and a claimant"
7. Amend page 3, section 4, lines 20 through line 13 on page 4.
Following: line 19
Strike: section 4 in its entirety
Renumber: all subsequent sections
8. Amend page 4, section 6, line 20.
Following: "[workman's]"
Strike: "wporkers"
Insert: "workers"
9. Amend page 5, section 8, line 15.
Following: line 15
Insert: "Section 9. Effective date. Section 1 of this act is effective on passage and approval."

(Material in brackets denotes cancelled type.)

And as so amended, be concurred in.

TOWE, Chairman

Report adopted.

Mr. President: We, your Committee on Judiciary, having had under consideration House Bill No. 153, respectfully report as follows: That House Bill No. 153, third reading, be amended as follows:

1. Amend page 1, section 2, lines 17 and 18.
Following: "plans,"
Strike: "and authorize"
2. Amend page 1, section 2, line 18.

April 3, 1975

Mr. President:

I am directed by the House of Representatives to inform your Honorable Body that the House on April 2, 1975, failed to concur in Senate Amendments to House Bill No. 613, and the Speaker was authorized to appoint a Free Conference Committee, and the House respectfully requests the Senate to appoint a like committee to confer on House Bill No. 613.

The Speaker appointed the following members:

Bob Palmer, Chairman
Ann Mary Dussault
Budd Gould

Respectfully,

EDWIN A. SMITH
Chief Clerk

April 3, 1975

Mr. President:

I am directed by the House of Representatives to inform your Honorable Body that the House on April 2, 1975, failed to concur in Senate Amendments to House Bill No. 349, and the Speaker was authorized to appoint a Free Conference Committee, and the House respectfully requests the Senate to appoint a like committee to confer on House Bill No. 349.

The Speaker appointed the following members:

William Day, Chairman
Dan Kemmis
John Anderson

Respectfully,

EDWIN A. SMITH
Chief Clerk

April 3, 1975

Mr. President:

I am directed by the House of Representatives to inform your Honorable Body that the House on April 2, 1975, failed to concur in Senate Amendments to House Bill No. 100, and the Speaker was authorized to appoint a Conference Committee, and the House respectfully requests the Senate to appoint a like committee to confer on Senate Amendments to House Bill No. 100.

The Speaker appointed the following members:

Pat McKittrick, Chairman
Gary Kimble
Howard Ellis

Respectfully,

EDWIN A. SMITH
Chief Clerk

April 2, 1975

Mr. President:

I am directed by the House of Representatives to inform your Honorable Body that the following Senate Bill and Senate Joint Resolution were this day read three several times and concurred in, titles and history agreed to and the said bill and joint resolution are herewith returned to the Senate:

Senate Bill No. 291 introduced by Mathers, Thiessen

Senate Joint Resolution No. 30 introduced by Flynn, Graham

Respectfully,

EDWIN A. SMITH
Chief Clerk

March 31, 1975

Mr. President:

I am directed by the House of Representatives to inform your Honorable Body that the following Senate Bills were this day read three times, and concurred in as amended, titles and history agreed to and the said bills are herewith returned to the Senate for concurrence in House amendments:

Senate Bill No. 13 introduced by Towe, Cetrone

Senate Bill No. 124 introduced by Roberts, Cetrone

Senate Bill No. 221 introduced by Drake, Flynn

Senate Bill No. 236 introduced by Norman, Flynn

Senate Bill No. 316 introduced by Lee, Flynn

Senate Bill No. 395 introduced by Roberts

Respectfully,

EDWIN A. SMITH
Chief Clerk

MOTIONS

Upon motion of Senator Lynch, duly carried, that the President be authorized to appoint a Conference Committee of three to meet with a like committee from the House to confer on Senate Amendments to House Bill No. 100.

The President appointed the following committee:

Lee, Chairman
Towe
Drake

Upon motion of Senator Lynch, duly carried, that the President be authorized to appoint a Free Conference Committee of three to meet with a like committee from the House to confer on House Bill No. 349.

The President appointed the following committee:

Graham, Chairman
Jergeson
Dunkle

Noes: Boylan, Cetrone, Fasbender, Greely, Jergeson, Regan, Roberts, Seibel, Warden. Total 9.

Absent and not voting: Colberg, Kolstad, Mehrens, Norman, Thiessen, Watt. Total 6.

Excused: Devine, Stephens. Total 2.

Upon motion of Senator Seibel, duly carried, the report of the Committee of the Whole was adopted as amended.

At the request of the President, and without objection, the Senate reverted to Order of Business No. 2.

REPORTS OF STANDING COMMITTEES

The following committees submitted the following reports:

Mr. President: We, your Committee on Bills, to whom were referred: Senate Bills Nos. 291, 340, and Senate Joint Resolution No. 30, beg leave to report the same back correctly enrolled.

DEVINE, Chairman

I have examined Senate Bill No. 291 introduced by me and find the same to be correct.

MATHERS

I have examined Senate Bill No. 340 introduced by me and find the same to be correct.

GOODOVER

I have examined Senate Joint Resolution No. 30 introduced by me and find the same to be correct.

FLYNN

The Senate will please take note that the President will, at the hour of 7:00 p.m., April 8, 1975, sign the following bills: Senate Bills Nos. 278, 291, 340; House Bills Nos. 70, 245, 282, 332, 424, 480, 519, 583, 647, 671; and Senate Joint Resolution No. 30.

W. GORDON McOMBER
President

REPORTS OF SELECT COMMITTEES

The following select committees submitted the following reports:

April 8, 1975

Mr. President and Speaker of the House:

We, your Joint Conference Committee on House Bill No. 100, met April 8, 1975, and considered Senate Committee on Judiciary Amendments dated March 25, 1975, and recommend as follows:

That the House accede to Amendment Nos. 1, 2, and 3,

And further that the Senate recede from Amendment Nos. 4, 5, and 6,

And further that House Bill No. 100, third reading bill, be amended as follows:

4. Amend page 3, section 2, subsection (2), following line 2.

Insert: a new subsection as follows and renumber the subsequent subsection:

"(3) All orders allowing full and final compromise settlements of workers' compensation claims shall be immediately referred to the workers' compensation judge, and the judge may within ten (10) days of the judge's receipt of an order disapprove an order allowing a full and final compromise settlement."

5. Amend page 3, section 2, present subsection (3), lines 3 and 4.

Following: "cases"

Strike: "[he has] heard"

Insert: "in which a petition under subsection (1) of this section has been filed"

6. Amend page 3, section 2, present subsection (3), line 6.

Following: "awarded"

Insert: "or settlement agreements, except for any final settlement or award of compensation more than four (4) years after the settlement has been made and except for any order approving a full and final compromise settlement of compensation"

And further that the House accede to Amendments Nos. 7, 8, and 9, (Material in brackets denotes cancelled type.)

And that House Bill No. 100, as so amended, be concurred in.

FOR THE HOUSE:

McKITTRICK, Chairman

KIMBLE

ELLIS

FOR THE SENATE:

LEE, Chairman

TOWE

April 8, 1975

Mr. President and Speaker of the House:

We, your Joint Conference Committee on Senate Bill No. 116, met, April 8, 1975, and considered:

House Committee on Local Government Amendments dated February 21, 1975,

House Committee of the Whole Amendments dated March 7, 1975, and recommend as follows:

Having had under consideration House Committee on Local Government Amendments dated February 21, 1975,

That the House recede from Amendment No. 1,

And further that Senate Bill No. 116, third reading bill, be amended as follows:

1. Amend page 6, section 1, lines 10 and 11.

Following: "in"

Strike: "the county, city, or town as set forth in section 16-2618 (1) that has filed a request"

Insert: "a county having at least two such financial institutions. Such institutions may request"

Having had under consideration House Committee of the Whole Amendments dated March 7, 1975,

That the House recede from Amendment No. 1,

Having further considered Senate Bill No. 116, the Joint Conference Committee further recommends:

Manley, Manning, Mathers, Mehrens, Murphy, Nelson, Norman, Olson, Regan, Roberts, Romney, Rosell, Roskie, Seibel, E. Smith, R. Smith, Stephens, Story, Towe, Turnage, Warden, Watt, Mr. President. Total 47.

Noes: None.

Absent and not voting: Thiessen. Total 1.

Excused: Devine, Foster. Total 2.

The Conference Committee Report on House Amendments to Senate Bill No. 264, having been read three several times, was concurred in by the following vote:

Ayes: Aber, Blaylock, Boylan, Brown, Cetrone, Colberg, Conover, Drake, Dunkle, Etchart, Fasbender, Flynn, Galt, Goodover, Graham, Greely, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lee, Lynch, McCallum, Manley, Manning, Mathers, Mehrens, Murphy, Nelson, Norman, Olson, Regan, Roberts, Romney, Rosell, Roskie, Seibel, E. Smith, R. Smith, Stephens, Story, Towe, Turnage, Warden, Watt, Mr. President. Total 47.

Noes: None.

Absent and not voting: Thiessen. Total 1.

Excused: Devine, Foster. Total 2.

House Bill No. 10, having been read three several times, was concurred in by the following roll call vote:

Ayes: Blaylock, Boylan, Brown, Cetrone, Colberg, Conover, Dunkle, Fasbender, Flynn, Graham, Greely, Hazelbaker, Healy, Jergeson, Lee, Lynch, McCallum, Manley, Manning, Mathers, Mehrens, Murphy, Norman, Olson, Regan, Roberts, Romney, Rosell, Seibel, E. Smith, R. Smith, Story, Thiessen, Towe, Warden, Watt, Mr. President. Total 37.

Noes: Aber, Drake, Etchart, Galt, Goodover, Himsl, Kolstad, Nelson, Roskie, Stephens, Turnage. Total 11.

Absent and not voting: None.

Excused: Devine, Foster. Total 2.

Upon motion of Senator Lynch, duly carried, that consideration of House Bill No. 265 on Third Reading be passed.

House Bill No. 705, having been read three several times, was concurred in by the following roll call vote:

Ayes: Blaylock, Boylan, Brown, Cetrone, Colberg, Conover, Drake, Dunkle, Etchart, Fasbender, Flynn, Galt, Graham, Greely, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lee, Lynch, McCallum, Manley, Manning, Mathers, Mehrens, Murphy, Norman, Regan, Roberts, Roskie, Seibel, E. Smith, R. Smith, Stephens, Story, Towe, Turnage, Warden, Watt, Mr. President. Total 41.

Noes: Aber, Goodover, Nelson, Olson, Romney, Rosell, Thiessen. Total 7.

Absent and not voting: None.

Excused: Devine, Foster. Total 2.

The Conference Committee Report on Senate Amendments to House Bill No. 100, having been read three several times, was concurred in by the following roll call vote:

Ayes: Aber, Blaylock, Boylan, Brown, Cetrone, Colberg, Conover, Dunkle, Fasnider, Flynn, Graham, Greely, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lee, Lynch, Manley, Manning, Mehrens, Murphy, Norman, Regan, Roberts, Romney, Rosell, Seibel, R. Smith, Stephens, Thiessen, Towe, Warden, Watt, Mr. President. Total 36.

Noes: Drake, Etchart, Galt, Goodover, McCallum, Mathers, Nelson, Olson, Roskie, E. Smith, Story, Turnage. Total 12.

Absent and not voting: None.

Excused: Devine, Foster. Total 2.

The Conference Committee Report on Senate Amendments to House Bill No. 177, having been read three several times, was concurred in by the following roll call vote:

Ayes: Blaylock, Boylan, Brown, Cetrone, Colberg, Conover, Drake, Dunkle, Etchart, Fasnider, Flynn, Galt, Graham, Greely, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lee, Lynch, McCallum, Manning, Mathers, Mehrens, Murphy, Nelson, Norman, Olson, Regan, Roberts, Romney, Roskie, Seibel, E. Smith, R. Smith, Stephens, Story, Thiessen, Towe, Turnage, Warden, Watt, Mr. President. Total 44.

Noes: Aber, Goodover, Manley, Rosell. Total 4.

Absent and not voting: None.

Excused: Devine, Foster. Total 2.

The Conference Committee Report on Senate Amendments to House Bill No. 512, having been read three several times was concurred in by the following roll call vote:

Ayes: Aber, Blaylock, Boylan, Brown, Cetrone, Colberg, Conover, Drake, Dunkle, Fasnider, Flynn, Galt, Goodover, Graham, Greely, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lee, Lynch, Manley, Manning, Mathers, Mehrens, Murphy, Norman, Olson, Regan, Roberts, Romney, Rosell, Roskie, Seibel, R. Smith, Stephens, Story, Towe, Warden, Watt, Mr. President. Total 42.

Noes: Etchart, McCallum, Nelson, E. Smith, Thiessen, Turnage. Total 6.

Absent and not voting: None.

Excused: Devine, Foster. Total 2.

At the request of the President, and without objection, the Senate reverted to Order of Business No. 8.

BUSINESS ON SECOND READING

Upon the motion of Senator Lynch, duly carried, the Senate resolved itself into a Committee of the Whole for the consideration of Business on Second Reading.

Senator Warden in the Chair. Committee arose.

Senate resumed. President McOmber presiding.

The Committee of the Whole submitted the following report:

Mr. President; We, your Committee of the Whole, having had under consideration Business on Second Reading, respectfully report and recommend as follows:

1 HOUSE BILL NO. 100

2 INTRODUCED BY MCKITTRICK, LOCKREM, DRISCOLL,

3 MELOY, MARKS, HARPER

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFICE OF
6 ~~WORKMEN'S~~ WORKERS' COMPENSATION JUDGE; PROVIDING FOR ITS
7 ADMINISTRATION AND JURISDICTION; AND REPEALING SECTIONS
8 92-812, 92-813, 92-815 THROUGH 92-817, 92-819, 92-821,
9 92-822, 92-823, 92-824, 92-824.1, 92-825, 92-827 THROUGH
10 92-836, 92-1347, 92-1350, 92-1351, 92-1353 THROUGH 92-1355,
11 92-1357, 92-1359 THROUGH 92-1365 AND PROVIDING AN EFFECTIVE
12 DATE."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:15 Section 1. There is a new R.C.M. section numbered
16 82A-1016 that reads as follows:

17 82A-1016. Creation of office of ~~workmen's~~ WORKERS'
18 compensation judge--allocation. (1) There is created the
19 office of ~~workmen's~~ WORKERS' compensation judge. The office
20 is allocated to the department of ~~labor--and--industry~~
21 ADMINISTRATION for administrative purposes only as
22 prescribed in section 82A-108, R.C.M. 1947.

23 (2) The governor shall appoint the ~~workmen's~~ WORKERS'
24 compensation judge for a term of six (6) years in the same
25 manner provided by section 93-705 through 93-717, R.C.M.

1 1947, for the appointment of supreme or district court
2 judges. A vacancy shall be filled in the same manner as the
3 original appointment.

4 (3) To be eligible for ~~workmen's~~ WORKERS' compensation
5 judge, a person must:

6 (a) have the qualifications necessary for district
7 court judges found in Article VII, section 9 of the Montana
8 constitution;

9 (b) devote full time to ~~his~~ THE duties as ~~workmen's~~ OF
10 WORKERS' compensation judge and not engage in the private
11 practice of law.

12 (4) The ~~workmen's~~ WORKERS' compensation judge is
13 entitled to the same salary and other emoluments as that of
14 a district judge BUT SHALL BE ACCORDED RETIREMENT BENEFITS
15 UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM.

16 Section 2. Powers of the ~~workmen's~~ WORKERS'
17 compensation judge. (1) A claimant, compensation plan one
18 employer, or insurer who has a dispute concerning any
19 benefits under Title 92, R.C.M. 1947, may petition the
20 ~~workmen's~~ WORKERS' compensation judge provided for in
21 section 82A-1016. The judge, after a hearing, shall make a
22 final determination of the dispute and, in accordance with
23 the law on benefits as set forth in Title 92, fix and
24 determine any benefits to be paid, and specify the manner of
25 payment.

(2) The judge may grant nominal disability awards in cases where it is found that an accident has occurred in the course and scope of employment, but no disability has resulted therefrom.

(3) THE WORKERS' COMPENSATION JUDGE MAY, ON HIS OWN MOTION OR ON REQUEST OF A PARTY, REVIEW AND APPROVE OR DISAPPROVE ANY SETTLEMENT APPROVED BY THE WORKERS' COMPENSATION DIVISION. ALL LUMP-SUM SETTLEMENTS BETWEEN THE DIVISION AND A CLAIMANT UNDER PLAN III SHALL BE APPROVED BY THE WORKERS' COMPENSATION JUDGE.

(4) The judge has continuing jurisdiction of cases he has heard, OR CLAIMS SETTLED and may, upon the application of any party, review, diminish, or increase in accordance with the law on benefits as set forth in Title 92, any benefits awarded OR SETTLEMENT AGREEMENT BETWEEN THE DIVISION AND A CLAIMANT, upon the grounds that the disability of the person has changed.

SECTION 3. INCREASE IN AWARD FOR UNREASONABLE DELAY OR REFUSAL TO PAY. WHEN PAYMENT OF COMPENSATION HAS BEEN UNREASONABLY DELAYED OR REFUSED, EITHER PRIOR OR SUBSEQUENT TO THE ISSUANCE OF AN AWARD, THE FULL AMOUNT OF THE ORDER, DECISION OR AWARD MAY BE INCREASED BY TEN PERCENT (10%) OF THE WEEKLY AWARD. THE QUESTION OF UNREASONABLE DELAY OR REFUSAL SHALL BE DETERMINED BY THE WORKERS' COMPENSATION JUDGE AND SUCH A FINDING CONSTITUTES GOOD CAUSE TO RESCIND,

ALTER OR AMEND ANY ORDER, DECISION OR AWARD PREVIOUSLY MADE IN THE CAUSE FOR THE PURPOSE OF MAKING THE INCREASE PROVIDED HEREIN.

Section 4. Disqualification of workmen's WORKERS' compensation judge. The workmen's WORKERS' compensation judge may at any time disqualify himself on the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of the workmen's WORKERS' compensation judge, the affidavit becomes a part of the record and the decision in the case. The affidavit may be made by any party to an action, motion, or proceeding and shall be filed at the office of the workmen's WORKERS' compensation judge at least fifteen (15) days before the date set for any action, motion, or proceeding (provided the party has had notice of the hearing of such action, motion, or proceeding for a period of at least fifteen (15) days and in case he THE PARTY has not had notice for such length of time he THE PARTY shall file the affidavit immediately upon receiving notice). If the workmen's WORKERS' compensation judge disqualifies himself in any case the chief justice of the Montana supreme court shall appoint a district court judge to hear the case.

Section 4. Location of office. The principal office of the workmen's WORKERS' compensation judge shall be in the city of Helena.

1 Section 5. Operating expenses. The ~~workmen's~~ WORKERS'
 2 compensation judge may employ such employees as may be
 3 required to carry out ~~his~~ THE duties under this act. All
 4 expenditures of the ~~workmen's~~ WORKERS'
 5 compensation judge, including but not limited to salaries,
 6 traveling expenses, office rent, office equipment and
 7 supplies, shall be paid out of the ~~workmen's~~ WORKERS'
 8 compensation administration fund.

9 Section 6. Administrative Procedure Act. (1) All
 10 proceedings and hearings before the ~~workmen's~~ WORKERS'
 11 compensation judge shall be in accordance with the
 12 appropriate provisions of the Montana Administrative
 13 Procedure Act. HOWEVER, THE WORKERS' COMPENSATION JUDGE IS
 14 NOT BOUND BY COMMON LAW AND STATUTORY RULES OF EVIDENCE.

15 (2) Notwithstanding section 82-4216, R.C.M. 1947, an
 16 appeal from a final decision of the ~~workmen's~~ WORKERS'
 17 compensation judge shall be filed directly with the supreme
 18 court of Montana in the manner provided by law for appeals
 19 from the district court in civil cases.

20 Section 7. Sections 92-812, 92-813, 92-815 through
 21 92-817, 92-819, 92-821, 92-822, 92-823, 92-824, 92-824.1,
 22 92-825, 92-827 through 92-836, 92-1347, 92-1350, 92-1351,
 23 92-1353 through 92-1355, 92-1357, 92-1359 through 92-1365,
 24 R.C.M. 1947, are repealed.

25 SECTION 8. EFFECTIVE DATE. SECTION 1 OF THIS ACT IS

1 EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

HOUSE BILL NO. 100

INTRODUCED BY MCKITTRICK, LOCKREM, DRISCOLL,
MELOY, MARKS, HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFICE OF
~~WORKMEN'S~~ WORKERS' COMPENSATION JUDGE; PROVIDING FOR ITS
ADMINISTRATION AND JURISDICTION; AND REPEALING SECTIONS
92-812, 92-813, 92-815 THROUGH 92-817, 92-819, 92-821,
92-822, 92-823, 92-824, 92-824.1, 92-825, 92-827 THROUGH
92-836, 92-1347, 92-1350, 92-1351, 92-1353 THROUGH 92-1355,
92-1357, 92-1359 THROUGH 92-1365 AND PROVIDING AN EFFECTIVE
DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. There is a new R.C.M. section numbered
82A-1016 that reads as follows:

82A-1016. Creation of office of ~~workmen's~~ WORKERS'
compensation judge--allocation. (1) There is created the
office of ~~workmen's~~ WORKERS' compensation judge. The office
is allocated to the department of ~~labor--and--industry~~
ADMINISTRATION for administrative purposes only as
prescribed in section 82A-108, R.C.M. 1947.

(2) The governor shall appoint the ~~workmen's~~ WORKERS'
compensation judge for a term of six (6) years in the same
manner provided by section 93-705 through 93-717, R.C.M.

1947, for the appointment of supreme or district court
judges. A vacancy shall be filled in the same manner as the
original appointment.

(3) To be eligible for ~~workmen's~~ WORKERS' compensation
judge, a person must:

(a) have the qualifications necessary for district
court judges found in Article VII, section 9 of the Montana
constitution;

(b) devote full time to ~~his~~ THE duties as ~~workmen's~~ OF
WORKERS' compensation judge and not engage in the private
practice of law.

(4) The ~~workmen's~~ WORKERS' compensation judge is
entitled to the same salary and other emoluments as that of
a district judge BUT SHALL BE ACCORDED RETIREMENT BENEFITS
UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM.

Section 2. Powers of the ~~workmen's~~ WORKERS'
compensation judge. (1) A claimant, compensation plan one
employer, or insurer who has a dispute concerning any
benefits under Title 92, R.C.M. 1947, may petition the
~~workmen's~~ WORKERS' compensation judge provided for in
section 82A-1016. The judge, after a hearing, shall make a
final determination of the dispute and, in accordance with
the law on benefits as set forth in Title 92, fix and
determine any benefits to be paid, and specify the manner of
payment.

(2) The judge may grant nominal disability awards in cases where it is found that an accident has occurred in the course and scope of employment, but no disability has resulted therefrom.

~~(3) THE WORKERS' COMPENSATION JUDGE MAY, ON HIS OWN MOTION OR ON REQUEST OF A PARTY, REVIEW AND APPROVE OR DISAPPROVE ANY SETTLEMENT APPROVED BY THE WORKERS' COMPENSATION DIVISION. ALL LUMP-SUM SETTLEMENTS BETWEEN THE DIVISION AND A CLAIMANT UNDER PLAN III SHALL BE APPROVED BY THE WORKERS' COMPENSATION JUDGE.~~

(3) ALL ORDERS ALLOWING FULL AND FINAL COMPROMISE SETTLEMENTS OF WORKERS' COMPENSATION CLAIMS SHALL BE IMMEDIATELY REFERRED TO THE WORKERS' COMPENSATION JUDGE, AND THE JUDGE MAY WITHIN TEN (10) DAYS OF THE JUDGE'S RECEIPT OF AN ORDER DISAPPROVE AN ORDER ALLOWING A FULL AND FINAL COMPROMISE SETTLEMENT.

(4) The judge has continuing jurisdiction of cases he has heard, IN WHICH A PETITION UNDER SUBSECTION (1) OF THIS SECTION HAS BEEN FILED ~~OR CLAIMS SETTLED~~ and may, upon the application of any party, review, diminish, or increase in accordance with the law on benefits as set forth in Title 92, any benefits awarded ~~OR SETTLEMENT AGREEMENT BETWEEN THE DIVISION AND A CLAIMANT~~ OR SETTLEMENT AGREEMENTS, EXCEPT FOR ANY FINAL SETTLEMENT OR AWARD OF COMPENSATION MORE THAN FOUR

(4) YEARS AFTER THE SETTLEMENT HAS BEEN MADE AND EXCEPT FOR

ANY ORDER APPROVING A FULL AND FINAL COMPROMISE SETTLEMENT OF COMPENSATION, upon the grounds that the disability of the person has changed.

SECTION 3. INCREASE IN AWARD FOR UNREASONABLE DELAY OR REFUSAL TO PAY. WHEN PAYMENT OF COMPENSATION HAS BEEN UNREASONABLY DELAYED OR REFUSED, EITHER PRIOR OR SUBSEQUENT TO THE ISSUANCE OF AN AWARD, THE FULL AMOUNT OF THE ORDER, DECISION OR AWARD MAY BE INCREASED BY TEN PERCENT (10%) OF THE WEEKLY AWARD. THE QUESTION OF UNREASONABLE DELAY OR REFUSAL SHALL BE DETERMINED BY THE WORKERS' COMPENSATION JUDGE AND SUCH A FINDING CONSTITUTES GOOD CAUSE TO RESCIND, ALTER OR AMEND ANY ORDER, DECISION OR AWARD PREVIOUSLY MADE IN THE CAUSE FOR THE PURPOSE OF MAKING THE INCREASE PROVIDED HEREIN.

~~Section 4. Disqualification of workmen's WORKERS' compensation judge. The workmen's WORKERS' compensation judge may at any time disqualify himself on the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of the workmen's WORKERS' compensation judge, the affidavit becomes a part of the record and the decision in the case. The affidavit may be made by any party to an action, motion, or proceeding and shall be filed at the office of the workmen's WORKERS' compensation judge at least fifteen (15) days before the date set for any action, motion, or proceeding (provided the~~

party--has-had-notice-of-the-hearing-of-such-action-motion,
 or-proceeding-for-a-period-of-at-least-fifteen-(15)-days-and
 in-case-he ~~THE-PARTY~~ has-not-had-notice-for-such-length-of
 time--he ~~THE-PARTY~~ shall-file-the-affidavit-immediately-upon
 receiving-notice;--if-the-workmen's WORKERS' compensation
 judge--disqualifies-himself-in-any-case-the-chief-justice-of
 the-Montana-supreme-court-shall--appoint--a--district--court
 judge-to-hear-the-case;

Section 4. Location of office. The principal office
 of the workmen's WORKERS' compensation judge shall be in the
 city of Helena.

Section 5. Operating expenses. The workmen's WORKERS'
 compensation judge may employ such employees as may be
 required to carry out his ~~THE~~ duties under this act. All
 expenditures of the workmen's ~~WORKERS'~~ WORKERS'
 compensation judge, including but not limited to salaries,
 traveling expenses, office rent, office equipment and
 supplies, shall be paid out of the workmen's WORKERS'
 compensation administration fund.

Section 6. Administrative Procedure Act. (1) All
 proceedings and hearings before the workmen's WORKERS'
 compensation judge shall be in accordance with the
 appropriate provisions of the Montana Administrative
 Procedure Act. HOWEVER, THE WORKERS' COMPENSATION JUDGE IS
NOT BOUND BY COMMON LAW AND STATUTORY RULES OF EVIDENCE.

(2) Notwithstanding section 82-4216, R.C.M. 1947, an
 appeal from a final decision of the workmen's WORKERS'
 compensation judge shall be filed directly with the supreme
 court of Montana in the manner provided by law for appeals
 from the district court in civil cases.

Section 7. Sections 92-812, 92-813, 92-815 through
 92-817, 92-819, 92-821, 92-822, 92-823, 92-824, 92-824.1,
 92-825, 92-827 through 92-836, 92-1347, 92-1350, 92-1351,
 92-1353 through 92-1355, 92-1357, 92-1359 through 92-1365,
 R.C.M. 1947, are repealed.

SECTION 8. EFFECTIVE DATE. SECTION 1 OF THIS ACT IS
EFFECTIVE ON PASSAGE AND APPROVAL.

-End-